

RECEIVED
CENTRAL FAX CENTER

AUG 02 2007

Application Serial No. 09/972,076

REMARKS

Claims 1, 2, 4-5, 8-9, 10, 12-13, 16-17, 34-38, 40-47, 49, 52, 57-61, 63-70, 72, and 75 are rejected under 35 USC 103(a) as being unpatentable by Courts *et al.*, in view of Harrison *et al.*, and further in view of Abu el Ata *et al.*. Further Claims 18-19, 23-27, 31-33, 39, and 62 are rejected under 35 USC 103(a) as being unpatentable over Courts *et al.*, in view of Abu el Ata *et al.*, in view of Harrison *et al.* and further in view of Marullo *et al.*

In common with all these rejections is a citation of Abu el Ata *et al.* However, Abu el Ata is not properly cited as prior art. The subject application was filed on 05 October 2001 and claimed benefit of U.S. provisional application serial no. 60/239,858, which was filed on 11 October, 2000. Abu el Ata was filed on 03 May 2004 and is a continuation-in-part of 10/014,317, which was filed on 26 October 2001. Abu el Ata also claims benefit of provisional application 60/467,483, which was filed on 02 May 2003. All of these documents have critical dates which fall after the priority date of the subject application. As noted, Abu el Ata is a continuation of U.S. patent application serial no. 10/014,317, which is in turn a continuation-in-part of U.S. patent application serial no. 09/127,191, which was filed 31 July 1988 and which is now USPN 6,311,144. However, by definition, a continuation-in-part contains subject matter that was not set forth in the parent. To the extent that the subject matter relied upon by the Examiner was not present in the parent, the parent cannot be relied upon as prior art. Here, the Examiner cites Abu el Ata in connection with Figures 1, 2, and 4a-4c therefore. A review of USPN 6,311,144 shows that none of these figures are present in this document. Accordingly, the material upon which the Examiner relies in rejecting Applicant's independent claims is not entitled to the earliest date of priority set forth in Abu el Ata's application. Absent that early date, Abu el Ata is not prior art and the Examiner's rejection must be withdrawn.

Application Serial No. 09/972,076

the Examiner's assertions concerning Courts and Harrison in view of the subject matter set forth in Claim 17, to expedite examination and remove any further issues that might prevent issuance of the patent, Applicant has canceled Claim 17. As noted, this is not admission, tacit or otherwise, that there is any merit to the Examiner's position with regard to Courts and Harrison in view of Claim 17, but is merely done for convenience.

In view of the foregoing, Applicant is of the opinion that the application is ready to be allowed. The Examiner has on several occasions proposed rejections and the Applicant has successfully countered them. By the Examiner's own admission, the references Courts and Harrison do not teach the claimed invention set forth in the independent claims, with the exception of Claim 17 as noted above. Over seven years of prosecution should be enough in this matter and the Applicant would like to be able to enjoy some of the term of the patent before the term has been expended entirely during endless prosecution.

Should the Examiner deem it helpful, he is encouraged to contact Applicant's attorney, Michael A. Glenn, at (650) 474-8400.

Respectfully submitted,



Michael A. Glenn.

Reg. No. 30,176

Customer No. 22862